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Report Series 1992

92-6

AMO's Response to Amendments to Bill 143, Waste Management Act

Association of Municipalities of Ontario
April 1992

MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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TABLE OF CONTENTS

PAGE

EXECUTIVE SUMMARY E-1

1 Introduction 1

2 AMO's Recommendations 1

3 Minister's Proposed Amendments 13

4 Liberal Amendment 17

5 Conclusion 18

Appendix A - Acknowledgments 19

EXECUTIVE SUMMARY

In March 1992, the Minister of the Environment proposed 26 amendments to Bill 143: An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act. These, plus one motion by the Liberals, were reviewed by the Standing Committee on Social Development during clause-by-clause hearings of the bill during the week of March 23, 1992.

Some of the Minister's amendments responded to the recommendations which AMO proposed in AMO's Response To: Bill 143: An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act. A few are new proposals.

A few of the concerns which AMO raised in its recommendations have not been addressed by the amendments, but provincial representatives have indicated responses to these in a variety of spring meetings involving AMO and Ministry of the Environment staff. Many of AMO's other recommendations have not been addressed by the province, either verbally or through the amendments. For these, AMO is asking the Minister of the Environment and her staff to respond in writing as to why they were not adopted.

The following document has two sections. The first notes AMO's recommendations and the provincial government's response to these. The second part of the document notes the provincial and Liberal amendments which have been proposed plus relevant municipal responses.

In the first section, called AMO's Recommendations, AMO notes that its recommendations on increased consultation with municipalities, having the Minister rather Minister, rather than an Ministry of the Environment (MOE) director, issue reports regarding landfilling, and limiting the amount of time a municipality must accept waste from sources outside of its boundaries have all been accepted. The province also accepted AMO's recommendations to delete the sections of Bill 143 which deal with injurious affection and the financial clause.

The MOE also gave partial responses to several of AMO's other recommendations. It said it would address AMO's concerns about improving the Environmental Assessment Act when it introduces changes to this legislation. It agreed that not all of the three Greater Toronto Area sites which were identified to receive emergency help in Bill 143 now are in crisis. The province conceded this point when it agreed that if there was time, the Environmental Assessment Board would hold an Environmental Protection Act hearing for the Keele Valley waste disposal site.

The province has not responded to several of AMO's other specific recommendations, either verbally or in amendments, and AMO has asked the Minister of the Environment to do so in writing so this information can aid AMO's continued work for municipalities in the municipal solid waste management area.

In the second section of this paper, AMO notes all of the amendments which were proposed by the province and the Liberals and makes municipal comments where appropriate. In many cases, these are cross-referenced with the comments which AMO makes in the first section regarding the province's reaction to AMO's original recommendations on Bill 143.

AMO concludes its paper by noting that it appreciates the opportunity to comment on the amendments to Bill 143 which were proposed by the Minister of the Environment and the Liberal party. It thanks the Minister for changing many of the clauses as urged in AMO's recommendations. But, AMO adds that it again urges the Minister of the Environment to respond with a written comment as to why the rest of AMO's recommendations were not addressed through her amendments to the bill.

1 Introduction

In March 1992, the Minister of the Environment proposed 26 amendments to Bill 143: An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act. These, plus one motion by the Liberals, were reviewed by the Standing Committee on Social Development during clause-by-clause hearings of the bill during the week of March 23, 1992.

Some of the Minister's amendments respond to the recommendations which AMO proposed in AMO's Response To: Bill 143: An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act. A few are new proposals.

A few of the concerns which AMO raised in its recommendations have not been addressed by the amendments, but provincial representatives have indicated responses to these in a variety of spring meetings involving AMO and Ministry of the Environment staff. Many of AMO's other recommendations have not been addressed by the province, either verbally or through the amendments. For these, AMO is asking the Minister of the Environment and her staff to respond in writing as to why they were not adopted.

The following document has two sections. The first notes AMO's recommendations and the provincial government's response to these. The second part of the document addresses the provincial and Liberal amendments which have been proposed plus relevant municipal responses.

2 AMO's Recommendations

The following section is presented with AMO's recommendations from AMO's Response To: Bill 143, An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act. Each recommendation is accompanied by the province's response, either verbally or through an amendment, and AMO's Commentary or call for action.

Recommendation #1:

2.1

The provincial government should adopt consultation with municipalities as a standard practice for all environmental legislation, policies, and regulations which may be introduced and which will impact on municipalities. This consultation should take place before the legislation, policies or regulations are introduced.

Province's Response:

The Minister said in AMO's January 20, 1992 consultation meeting with her that AMO should have been consulted and that will be done in the future. Opportunities for consultation have begun to improve since that time. AMO also plans to have input into the development of the Ministry of the Environment's (MOE) "Who Pays for Waste Management" Initiatives Paper.

2.2 *Recommendation #2:*

The provincial government should work with AMO to develop a waste management act, separate from the Environmental Assessment Act, which addresses solid waste management for all Ontario municipalities and which applies equitably and fairly to all Ontario municipalities.

Province's Response:

Drew Blackwell, assistant deputy minister for the Ministry of the Environment's Office of Waste Reduction, has said the province does not plan to develop a waste management act separate from the Environmental Assessment Act (EAA). The Minister is still reviewing the Environmental Assessment Advisory Committee's proposed changes to the EAA and hopes to address AMO's concerns through that process.

AMO's Commentary:

The result of this provincial decision is that while AMO's work on Bill 143 has resulted in some significant changes within the bill, particularly the removal of the wide-ranging financial clause Section 33 (2) (j), the basic intent and thrust of

Bill 143 remains unchanged. AMO continues to urge that such a waste management act should be introduced.

2.3 *Recommendation #3:*

AMO is not convinced that a crisis exists in all of the three Greater Toronto Area sites identified in Bill 143 and, as such, it does not believe this legislation is warranted. AMO urges the Minister of the Environment to define what constitutes a "crisis" in waste management.

Province's Amendment:

The Minister has proposed an amendment regarding this. Section 18.1 has been added to provide for an Environmental Protection Act hearing by the Environmental Assessment Board for the Keele Valley waste disposal site if the Interim Waste Authority's director decides this can be done in enough time to ensure the work needed to increase the capacity of the site will be finished before the site is filled to its approved capacity.

AMO's Commentary:

By proposing this amendment, the Minister has admitted - as AMO noted in AMO's Response To: Bill 143: An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act - that not all of the three landfill sites for which this bill has been introduced are in "crisis". AMO's point with this recommendation was to note that such a bill, which unfairly scoped the environmental assessment process for three Toronto-area municipalities but not the rest of Ontario's municipalities, was not needed if two of the three landfill sites were not in crisis. The Minister had most of the emergency powers needed to deal with the Britannia landfill site, which will have its approved capacity filled this summer. The Minister has thus admitted that only one site is in crisis, but this has not been enough to stop the passage of this bill.

2.4 *Recommendation #4:*

The provincial government should not proceed with Bill 143 until the Ministry of the Environment and Ministry of Municipal Affairs' paper on statutory authority for municipalities: i) is presented to municipalities in early 1992, ii) has completed the consultation process, and iii) its issues have been resolved.

Province's Response:

The province released the Ministry of Municipal Affairs' Municipal Waste Management Powers in Ontario: A Discussion Paper on March 31, 1992.

AMO's Commentary:

While the MMA paper was released before the third reading of Bill 143, Bill 143 was to proceed into the Ontario Legislature when it resumed sitting in April 1992. The provincial government's plan was to pass Bill 143 early in the session. The MMA's paper is aimed at discussing options and it will be some months before its process is completed. Mr. Blackwell has said there will be a consultation period in the spring, compilation of responses during the summer, and introduction of amendments for this area into the Ontario legislature in the fall 1992.

This thus does not achieve the synchronization which AMO's recommendation was striving for.

2.5 *Recommendation #5:*

The Ministry of the Environment should clarify the language in section 17 (4) so that it specifically states which municipality is being referred to in that section.

Province's Response:

No amendment or comment.

AMO's Commentary:

This recommendation was for clarification.

2.6 *Recommendation #6:*

The Ministry of the Environment should amend Section 23 (2) (k) of Bill 143 by adding "in the absence of suitable alternatives" at the end of the phrase and before "; and".

Province's Response:

No amendment or comment.

AMO's Commentary:

AMO did not achieve its goal of having this limiting clause appended to this section and it would like the province to respond as to why this clause was not accepted.

2.7 *Recommendation #7:*

In Section 26 of Bill 143, which repeals Section 29 of the Environmental Protection Act and substitutes a new Section 29, the Ministry of the Environment should replace the word "Director" with the word "Minister" in section 29 (1).

Province's Response:

The Minister has proposed an amendment to Section 26, which amends Section 29 of the Environmental Protection Act. The result is that when the Minister reports in writing to a municipality's clerk that the Minister believes it is necessary in the public interest that waste be collected or a waste management system or any part of it be established, maintained, operated, improved, extended, enlarged, altered, repaired or replaced, the Minister's report must include a statement of the reasons for the Minister's opinion.

AMO's Commentary:

AMO has achieved the purpose of its recommendation, which was to continue to have the Minister rather than the Interim Waste Authority's Director, issue this report.

2.8 ***Recommendation #8:***

If the Minister of the Environment exercises the powers noted in Section 26 of Part IV of Bill 143, which repeals Section 29 of the Environmental Protection Act and replaces it with Section 29 contained in Bill 143, the capacity used through the exercise of Section (29) (2) (b) must be replaced at no additional cost to the host municipality. The same principle should also be applied any time the powers are exercised - for any uses ranging from processing to the use of a municipality's landfill.

Province's Response:

The Minister has moved to amend Section 26 of Bill 143, which applies to Section 29 of the Environmental Protection Act. The amendment says if a report requires a municipality to collect or transport waste, including waste from sources outside of its boundaries (Section 26 (3) (a)), and if the report requires a municipality to do anything that will benefit a person (Section 26 (4)), then the "person" shall provide the compensation. (Section (26 (4) 1.)

AMO's Commentary:

The "explanatory notes" which were provided with the amendments note that the "person" would be a municipality. The note adds that:

> "when a municipality is required to accept waste from outside its boundaries, the Minister is empowered to require the provision of compensation. Compensation might range from monetary payments to an allotment of future landfill capacity."

Required action:

AMO urges the province to clarify this reference to "person" so it is understood that municipalities are the "person" entitled to land or financial compensation.

2.9 ***Recommendation #9:***

In Section 26 in Part IV of Bill 143, which repeals Section 29 of the Environmental Protection Act (EPA) and replaces it with Section 29 of Bill 143, the Ministry of the Environment should change the language of (29) (2) (c) so that it specifically applies only to an emergency situation.

Province's Response:

The Minister has rewritten Section 26, which applies to Section 29 of the EPA, so that the former Section (29) (2) (c), which applied to planning, has been deleted.

AMO's Commentary:

The explanatory notes accompanying the government's motions to amend Bill 143 note that planning can be dealt with through the Minister's report. This report is likely to be used only in urgent circumstances where appropriate planning will be of a narrow scope and also be a necessary adjunct to the implementation of the report.

AMO is pleased with this change since it answers AMO's recommendation.

2.10 ***Recommendation #10:***

The Ministry of the Environment should delete the word "planning" from Section 33 (1) (d) (i).

Province's Response:

No amendment or comment.

AMO's Commentary:

Despite the amendment regarding planning which was noted in AMO's Recommendation #9, this section has not been changed or deleted.

Required Action:

AMO urges the provincial government to delete the word "planning" from Section 33 (1) (d) (i) of Bill 143. If it does not, AMO requests that the Minister of the Environment comment in writing why that change was not made.

2.11 ***Recommendation #11:***

In Section 33 (1) (d) (ii) and (iii) of Bill 143, the Ministry of the Environment should:

a) amend the section to clarify that it can only set technical specifications for these tasks of discontinuing the systems and closing the sites; and

b) consult with AMO before regulations under this section are introduced.

Province's Response:

No amendment or comment.

Required Action:

AMO urges the provincial government to make the changes as noted in AMO's recommendation #11. If it does not, AMO requests that the Minister of the Environment comment in writing why that change was not made.

2.12 ***Recommendation #12:***

The Ministry of the Environment should delete Section 33 (2) (j) of Bill 143.

Province's Response:

The Minister has proposed that Section 33 (2) (j) be deleted.

AMO's Commentary:

This is a major victory for AMO as this clause had great financial implications for all Ontario municipalities. This is tempered, however, by the fact that the explanatory note also says the clause will not proceed pending public consultation on this and a number of related matters.

2.13 ***Recommendation #13:***

The Minister of the Environment should release the Ministry of the Environment's Initiatives Paper on financing the waste management system before Bill 143 proceeds so municipalities may understand all of the financial implications of the proposed changes before they are introduced.

Province's Response:

No amendment. The MOE now is beginning work on its "Who Pays" paper and it is expected to be released for discussion in the fall of 1992. AMO will be having input both into the development of this paper and the consultation process following its release.

AMO's Commentary:

The late release of the MOE "Who Pays" paper does not answer AMO's current concerns about how the new waste management system is to be funded. However, the financial clause is being removed from Bill 143 and it had the widest implications for all Ontario municipalities.

2.14 ***Recommendation #14:***

The funding arrangements for the provisions of Bill 143 and all subsequent municipal-provincial waste management provisions should be set in the context of the AMO-provincial disentanglement process.

Province's Response:

No amendment. However, the Minister said on January 21, 1992, in her statement to the Ontario Legislature's Standing Committee on Social Development's Public Hearings on Bill 143, that given the current fiscal situation and the focus on "disentanglement" of provincial and municipal powers, the province recognized that it was critical to continue discussions with AMO and others relating to the powers of regulation provided under Section 33 of Bill 143.

AMO's Commentary:

Waste management and environment issues will be discussed this year during the disentanglement process. Both the MOE and municipalities are beginning work to decide how this will proceed.

2.15 ***Recommendation #15:***

The Minister of the Environment should define the funding mechanism for the Interim Waste Authority.

Province's Response:

No amendment or comment.

AMO's Commentary:

The MOE is working on a paper on "Who Pays" for waste management, to which AMO will be offering early input. At this point, there is no indication as to whether this matter will be addressed in that paper. AMO would like the Minister of the Environment to clarify whether that will occur.

2.16 ***Recommendation #16:***

The Ministry of the Environment should extend the amount of time which municipalities or the public have to respond to the notice in Section 18 (6) of Bill 143.

Province's Response:

No amendment or comment.

AMO's Commentary:

AMO urges the Provincial government to delete the word "Planning" from Section 33(1)(d)(i) of Bill 143. If it does not, AMO requests that the Minister of the Environment comment in writing why that change was not made.

2.17 ***Recommendation #17:***

The Ministry of the Environment should provide empirical justification for the deletion of the options of incineration and transportation of solid waste in Section 14 (2) (a) of Part III of Bill 143. If this cannot be provided, these deletions should be omitted from the bill.

Province's Response:

The Minister has not proposed an amendment which addresses this concern.

She has proposed adding a clause in Section 26, which amends Section 29 of the EPA, so there now is a clause (4) which states:

> "Requirements in a report relating to waste from a source outside the boundaries of a municipality are binding on the municipality only during the five year period following the making of the report or during such shorter period as the report may specify."

AMO's Commentary:

The Minister proposed the five-year limit during her January 21, 1992 statement to the Standing Committee on Social Development, which was conducting the Bill 143 public hearings. During its presentation the following day, AMO noted that this was a new proposal and AMO would be happy to discuss it with the Minister and her staff. That discussion has not occurred.

AMO has repeatedly urged the Minister to justify her rejection of these options of incineration and transportation of solid waste. This has not occurred.

AMO is still not satisfied with the province's response as it has not yet received empirical justification from the Minister or her staff as to why these options cannot be considered in a municipality's waste management systems. AMO continues to urge the province to provide this information.

2.18 ***Recommendation #18:***

In Section 13 (2) of Bill 143, the Minister of the Environment should use estimates provided by the municipality since the Ministry of the Environment does not yet have an accurate database of this information.

Province's Response:

No amendment or comment.

AMO's Commentary:

The province is doing the preparatory work to establish an information database, called the Waste Diversion Information System. The MOE has presented some information on this to AMO and its representatives.

2.19 ***Recommendation #19:***

The Ministry of the Environment should amend Section 19 of Bill 143, the section dealing with Injurious Affection, in consultation with AMO and its member-municipalities to reflect municipal concerns.

Province's Response:

The Minister has proposed the deletion of Section 19, which deals with Injurious Affection.

AMO's Commentary:

AMO has achieved even more than what it requested in this recommendation.

2.20 ***Recommendation #20:***

The Ministry of the Environment should work with municipalities to clearly define the clause "posing waste problems"in Section 33 (12) of Bill 143. The phrase should not be placed in legislation until that has occurred and a clear definition can accompany it.

Province's Response:

No amendment or comment.

AMO's Commentary:

AMO urges the Provincial government to delete the word "Planning" from Section 33(1)(d)(i) of Bill 143. If it does not, AMO requests that the Minister of the Environment comment in writing why that change was not made.

3 Minister's Proposed Amendments

3.1	**Subsection 3(1)**	♦ AMO previously did not comment on this section, but this amendment does broaden the activities which the provincial government is requesting to do. However, it also reflects what is already contained in Bill 143. The amendment also specifies that these powers pertain only to the landfill sites specified in Bill 143.
3.2	**Subsection 3(3)**	♦ This amendment clarifies the wording in this section.
3.3	**Section 3.1**	♦ This addition deals with the closure of roads by the Ontario Municipal Board. The province's explanatory notes state "road closure is a separate legal step, distinct from expropriation, and can be quite cumbersome".

3.4	**Subsections 7 (1) and (1.1)**	♦	This amendment broadens the activities for which inspectors can do inspections. It also limits the access inspectors have so they cannot enter buildings.
3.5	**Section 8, paragraphs 2.1 and 2.2**	♦	This amendment adds two paragraphs to a previous section so advance note of an inspection is more detailed for owners or occupants.
3.6	**Subsections 8 (2) and (3)**	♦	This amendment adds two paragraphs regarding inspections so that where an agreement is reached between the parties, owners and occupants can waive such formalities as seven days advance notice in writing.
3.7	**Section 9**	♦	This amendment clarifies information about inspections.
3.8	**Clause 14 (2)(a)**	♦	This amendment deletes the possibility that waste can be exported for disposal, but leaves available the possibility that it can be exported for reuse or recycling. This is done by adding the words "for disposal" at the end of the clause.

AMO's Commentary:

AMO has addressed much of this concern in its comment above regarding its Recommendation #17.

3.9	**Subsection 17 (10.1)**	♦	The Minister has proposed this amendment to counter an anticipated motion which would limit the duration of a Minister's Report to five years with respect to accepting waste from outside municipal boundaries. The Minister's amendment meant this restricted limit would not apply to the three municipalities specified in Bill 143.

AMO's Commentary:

AMO is pleased that the Minister has placed some time limit on this clause. However, it questions whether five years is the appropriate time limit.

3.10	Subsections 17 (11.1) and (13)	♦	This amendment clarifies that the Minister's reports referred to are only those made in 1991 and not any which could subsequently be issued.
3.11	Subsections 18 (8) and (9)	♦	This amendment would allow the Interim Waste Authority's Director to make public his/her decisions regarding issuing approvals and the reasons for those decisions. These would include a summary of the submissions and be free of cost.
3.12	Section 18.1	♦	Please refer to the above AMO response as noted for Recommendation 3.
3.13	Section 19	♦	Please refer to the above AMO response as noted for Recommendation 19.
3.14	Subsections 23 (2.1) and (3)	♦	The additions of these sections would restrict the use of the Minister's power to establish and operate waste disposal sites to instances where the municipality consents or where it does not have adequate facilities which will deal with the waste.

Required Action:

AMO urges the Ministry of the Environment to issue a communication stating exactly what rights the Minister has to build to municipalities and operate sites and how these will be changed by the totality of Bill 143.

3.15	Section 24 (2)	♦	This amendment simplifies the definition of waste management system so that "arrangements" is not included.
3.16	Section 26	♦	Please refer to AMO's response regarding Recommendation 7, which addresses Section 26 (2).
		♦	Please refer to AMO's response regarding Recommendation 17, which addresses Section 26 (3).

- Please refer to AMO's response regarding Recommendation 8, which addresses Section 26 (4).

- Please refer to AMO's response regarding Recommendation 17, which addresses Section (26) (5).

3.17 **Subsection 33 (2) (j)**

- Please refer to AMO's response to Recommendation 12.

3.18 **Subsection 33 (2) (k)**

- This amendment clarifies the subsection by restricting the purpose for which this power can be exercised to 3Rs facilities ie. facilities which contribute to the diversion of waste from final disposal.

AMO's Commentary:

- This was a restriction which AMO discussed during conversations with MOE after Bill 143 was introduced.

3.19 **Subsection 33 (2) (r)**

- The amendment deletes municipalities from this clause and restricts the denoted power to 3Rs facilities.

3.20 **Subsection 33 (2) (t)**

- This amendment restricts the power for which this clause can be intended.

3.21 **Subsection 33 (3.1)**

- This new clause expands clause 176 (7) (b) of the EPA to allow deposits to be placed on any product or material.

AMO's Commentary:

AMO supports this amendment as noted in the policies presented in AMO's Policy on Refillable Beverage Containers (92-5, April 1992).

3.22 **Subsection 33 (8.1)**

- This new clause pertains to regulating advertising for deposits.

3.23 Subsection 33 (9.1)

- This new clause expands the province's authority to regulate return of deposits from the area of any packaging or container to any packaging, container or product.

AMO's Commentary:

AMO supports this amendment as noted in the policies presented in AMO's Policy on Refillable Beverage Containers (92-5, April 1992).

3.24 Section 35

- This amendment deletes Section 35 since the Minister will be issuing reports rather than the Director.

AMO's Commentary:

- This is in keeping with the changes the Minister made earlier to have the Minister issue a report rather than the Interim Waste Authority Director issue an order.

3.25 and 3.26

- These two amendments pertain to a French translation and are not contained in the English amendments.

4 Liberal Amendment

- This amendment adds the words "other than section 27 of the Environmental Protection Act" to Section 20 of Bill 143. It means that the Lieutenant Governor in Council cannot expand a landfill site through regulation, but must do that through a Minister's report as now is required.

5 Conclusion

The Association of Municipalities of Ontario appreciates the opportunity to comment on the amendments to Bill 143 which have been proposed by the Minister of the Environment and the Liberal party. It would like to thank the Minister for changing some of the clauses as urged in AMO's recommendations. However, AMO again urges the Minister of the Environment to respond with a written comment as to why the rest of AMO's recommendations were not addressed through her amendments.

Appendix A - Acknowledgments

The Association of Municipalities of Ontario would like to thank the members of its Environmental Policy Committee who volunteered their time to produce this document. The members of the team were:

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91-9	AMO's Response to The Waste Section of the Ontario Round Table on Environment and Economy: Challenge Paper
91-10	AMO's Response to The Recycling Council of Ontario Discussion Paper: Who Should Pay for Recycling?
91-11	AMO's Policy Position on Reduction and Reuse
91-12	AMO's Response to the 1991 Ontario Budget
91-13	AMO's Response to "A Housing Framework for Ontario"
91-14	AMO's Response to "Government Land for Housing"
91-15	AMO's Response to "The Report of the Advisory Committee to the Minister of Municipal Affairs on the Provincial-Municipal Financial Relationship, 1991" (The Hopcroft Report)
91-16	AMO's Policy Position on: Scrap Tire Management and the Ontario Tire Tax
91-17	"Disentangling the Provincial-Municipal Relationship": 1991 AMO Submission to the Provincial Cabinet
91-18	AMO's Response to the 1991 Draft Wetlands Policy Statement
91-19	Implementation of the Land Use Planning for Housing Policy Statement: Issues and Recommendations ($15)
91-20	AMO's Response to the Reports of the Premier's Council on Health Strategy
91-21	AMO's Response To: The Ministry of the Environment Waste Reduction Office's Initiatives Paper No. 1, Regulatory Measures to Achieve Ontario's Waste Reduction Targets
92-1	AMO's Response to: Bill 143: An Act Respecting the Management of Waste in the Greater Toronto Area and to Amend the Environmental Protection Act
92-2	AMO's Response to *Open Local Government* (Draft Legislation Re: Conflict of Interest, Open Meetings and Disposal of Property)
92-3	AMO's Response to the *Redirection of Long-Term Care and Support Services in Ontario*
92-4	Framework for Roles and Responsibilities: First Submission to the Commission on Planning and Development Reform in Ontario
92-5	AMO's Policy on Refillable Beverage Containers
92-6	AMO's Response to Amendments to Bill 143, Waste Management Act

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